

REMARKS

The Office Action dated May 5, 2010 has been reviewed and carefully considered. Claims 1-6 and 8-10 are pending. Reconsideration of the above-identified application in light of the amendments and remarks is respectfully requested.

Claims 1-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Maissel et al (U.S. Pub. 2004/0049787 A1) in view of Sha-Nazaroff et al. (U.S. Patent No.: 6,317,881).

Amended claim 1 recites the limitations of “wherein at least a part of the criteria is based on information about the program evaluation by other users of the broadcast medium, *“wherein programs fulfilling a temporally limited negative criterion are positioned at a distance from the current navigation position in the list, which distance corresponds to the remaining duration of the negative criterion”*. No new matter has been added. Support for the amendments can be found, *inter alia*, on page 4, line 32 – page 5, line 8. Amended independent claims 6 and 9 recite similar limitations.

Applicant respectfully submits that the cited Maissel and Sha-Nazaroff, alone or in combination, fail to teach or suggest the above limitations.

The Office Action indicates “that it was notoriously well known in the art at the time of invention by applicant sort [sic] a program listing wherein programs fulfilling a temporally limited negative criterion are positioned at a distance from the current navigation position in the list, which distance corresponds to the remaining duration of the negative criterion...” (Office Action, page 6, 2nd paragraph). Applicants respectfully disagree.

The Office Action further takes Official Notice that “sorting the programs within the list by start time wherein programs having a later start time are listed later within the list, so as to provide a more user friendly system by easily allowing the viewer to identify which programs are currently playing and which programs require the viewer to wait some period of time until they begin” (Office Action, page 6, 2nd paragraph).

However, applicants respectfully note that sorting programs by start time is a positive criterion and not a negative criterion. Moreover, a user that sorts a list with a criterion that they want listed first is positive, thus, in the above example the user selects positive criterion, such as start time or content theme (e.g. sports), and the sort provides matches thereto on top of the list. Although, it does provide items that do match less lower on the list, it is still sorted by the user’s positive criterion to generate a list of matching items first and does not

position programs fulfilling a temporally limited negative criterion are positioned at a distance from the current navigation position in the list, which distance corresponds to the remaining duration of the negative criterion.

Still further nothing in the Office Action addresses the “*temporally limited negative criterion*” limitation of the claimed language. As further described in the specification on page 5, lines 1-8:

Such a negative criterion may be a block of commercials which has been inserted in the program and which the user would like to skip. In accordance with the proposed method, the corresponding program is then repositioned in the list, i.e. it is moved further away from the currently selected program (selection position) as the duration of the commercial block is longer. In this way, it is achieved that, when zapping through the program, the user will most probably not reach the program with the commercials until after the negative criterion has been eliminated, i.e. until after the block of commercials has ended.

To simply state that the general idea of the use of temporally negative criterion to position programs on a list would be an obvious modification to one skilled in the art begs the question. How? It is easy to allege as being an obvious modification of known positive criterion sorting methods. It is much easier said, however, than done. To allege otherwise is merely to reduce the method of claim 1 to a mere “gist” or “thrust.” Such an interpretation disregards the “as a whole” requirement of MPEP 2141.02, and distills the complexities of the actual system of Claim 12 (the implementation of the method of Claim 1) to an abstract general buzz word, precisely the problem obviated by MPEP 2141.02.

What reference teaches, and moreover provides the motivation to combine with the present method, an actual real world reduction to practice of such an “obvious modification to have programs fulfilling a temporally limited negative criterion are positioned at a distance from the current navigation position in the list, which distance corresponds to the remaining duration of the negative criterion”? How is the integration to occur? What suggests the desirability of such a combination?

Thus, Applicant traverses this rejection, and respectfully requests that the Examiner’s position be supported by a reference, as per MPEP 2144.03.

Since Maissel and Sha-Nazaroff, alone or in combination, do not teach all of the limitations of independent claims 1, 6 and 9, it cannot anticipate the present invention. For at least the above cited reasons, Applicant submits that Claims 1, 6 and 9 are patentable over Maissel.

With regard to claims 2-5, 8 and 10 these claims depend from the independent claim discussed above, which have been shown to be allowable in view of the cited reference. Accordingly, each of claims 2-5, 8 and 10 are also allowable by virtue of its dependence from an allowable base claim.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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